

**IN THE UNITED STATES DISTRICT COURT  
FOR THE SOUTHERN DISTRICT OF TEXAS  
HOUSTON DIVISION**

**MICHAEL SHEAH, Individually and on  
Behalf of All Others Similarly Situated,**

**Plaintiff,**

**V.**

**ACCREDITO PACKAGING, INC.**

**Defendant.**

[illegible]

**FLSA Collective Action Pursuant to  
29 U.S.C. § 216(b)**

**Civil Action No. 4:13-cv-00687**

## Jury Demanded

## PLAINTIFF'S RESPONSE TO SHOW CAUSE ORDER

On April 4, 2013, the Court entered an order for Plaintiff to show cause as to why this action should not be dismissed as Defendant Accredo Packaging, Inc. has not yet been served. Plaintiff responds as follows:

Plaintiff has not served Defendant Accredo because Plaintiff has not received the summons from the Clerk of the Court. Plaintiff filed this action on March 12, 2013. On March 13, 2013, Plaintiff was notified by ECF that the summons had been issued by the Clerk. Although the Clerk indicated the summons was mailed on March 13, 2013, the summons never arrived in Plaintiff's counsel's office. On approximately March 27, 2013, Plaintiff's Counsel and his staff conferred about the status of service. Plaintiff's Counsel was informed that the summons had not yet arrived. Plaintiff's Counsel's staff undertook a thorough search throughout the office to confirm the summons had not simply arrived and been misplaced. The summons was not found. Plaintiff's Counsel's office called the Clerk's office on March 28, 2013, but the office was closed at the time of the call. Plaintiff's Counsel's office was closed on Friday,

March 29, 2013. On April 3, 2013, Plaintiff's Counsel's staff contacted the Clerk and alerted the Clerk's staff that the summons had not been received. The Clerk re-issued the summons on April 3, 2013. On April 4, 2013, the Court issued the show cause order.

Although Federal Rule of Civil Procedure 4(m) permits a plaintiff 120 days to serve a defendant before the court dismisses an action "on motion or on its own after notice to the plaintiff," Plaintiff's Counsel is cognizant of the need for timely service. As of the date of this Response (one-and-a-half days after issuance), the summons issued on April 3, 2013, has not arrived in Plaintiff's Counsel's office. As soon as it arrives, it will be forwarded to the firm's process server with a request for expedited service. Plaintiff's Counsel will file the return of service as soon as possible so this case stays on track.

Respectfully submitted,

/s/ J. Derek Braziel

**J. DEREK BRAZIEL**

*Attorney in Charge*

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